

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION**

**OLD ST. PAUL MISSIONARY BAPTIST CHURCH**

**PLAINTIFF**

**V.**

**3:08CV00129 JMM**

**TIMOTHY PATRICK KIRK, INDIVIDUALLY AND  
D/B/A AMERICAN SURETY; GREGORY CANDEBAT**

**DEFENDANTS**

**ORDER GRANTING MOTION TO REMAND**

Pending is the Plaintiff's Motion to Remand the case back to the Circuit Court of Crittenden County, Arkansas, where it was originally filed. Separate Defendant Timothy Patrick Kirk d/b/a American Surety ("Kirk") objects to the motion.

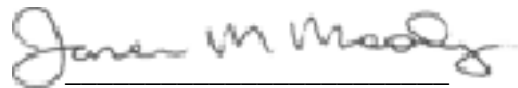
The Complaint was filed in Crittenden County Circuit Court on March 6, 2008. Plaintiff served Defendant Gregory Candebat on June 20, 2008. Plaintiff served Defendant Kirk on July 18, 2008. Defendant Kirk filed a Notice of Removal in this Court on August 15, 2008, within the 30 day deadline of 28 U.S.C. § 1446(b). The Notice acknowledged that Defendant Candebat had been served but did not purport to join Candebat in the removal. Plaintiff filed a Motion to Remand on August 21, 2008 stating that the case should be remanded to state court because Defendant Candebat had not been joined and had not consented to the Notice of Removal.

"Removal is authorized by 28 U.S.C. § 1441 and governed by § 1446. Where there are multiple defendants, all must join in a petition to remove within thirty days of service." *Thorn v. Amalgamated Transit Union*, 305 F.3d 826, 833 (8th Cir. 2002)(citing *Marano Enters. of Kan. v. Z-Teca Rests., L.P.*, 254 F.3d 753, 754 & n. 2 (8th Cir.2001)). Failure to join all defendants in a notice of removal renders the notice defective. *Horton v. Conklin*, 431 F.3d 602, 604 (8<sup>th</sup> Cir. 2005)(citing *Marano*, 254 F.3d at 755 n.2 ("Under the rule of unanimity, ordinarily all defendants must join in a notice of removal or the case will be remanded.")).

The Court finds that the Motion to Remand (Docket # 4) should be granted. Defendant Kirk's Notice of Removal did not include the consent of Defendant Candebat and, therefore, did not comply with 28 U.S.C. § 1446 and the rule of unanimity followed in this Circuit. Further, Defendant Kirk's Supplemental Response to the motion which includes a Consent for Removal signed by Defendant Candebat was filed on September 9, 2008 and is untimely. *See Dahl v. R.J. Reynolds Tobacco Co.*, 478 F.3d 965, 968 (8<sup>th</sup> Cir. 2007)(“ Federal courts . . . are strictly to construe legislation permitting removal.”).

For this reason, the Motion to Remand (Docket # 4) is GRANTED. The Clerk is directed to remand the case back to the Clerk of the Circuit Court of Crittenden County, Arkansas forthwith.

IT IS SO ORDERED this 15<sup>th</sup> day of September 2008.

A handwritten signature in dark ink, appearing to read "James M. Moody", is written over a horizontal line.

James M. Moody  
United States District Judge